Operation Iraqi Freedom

OIF 05-06

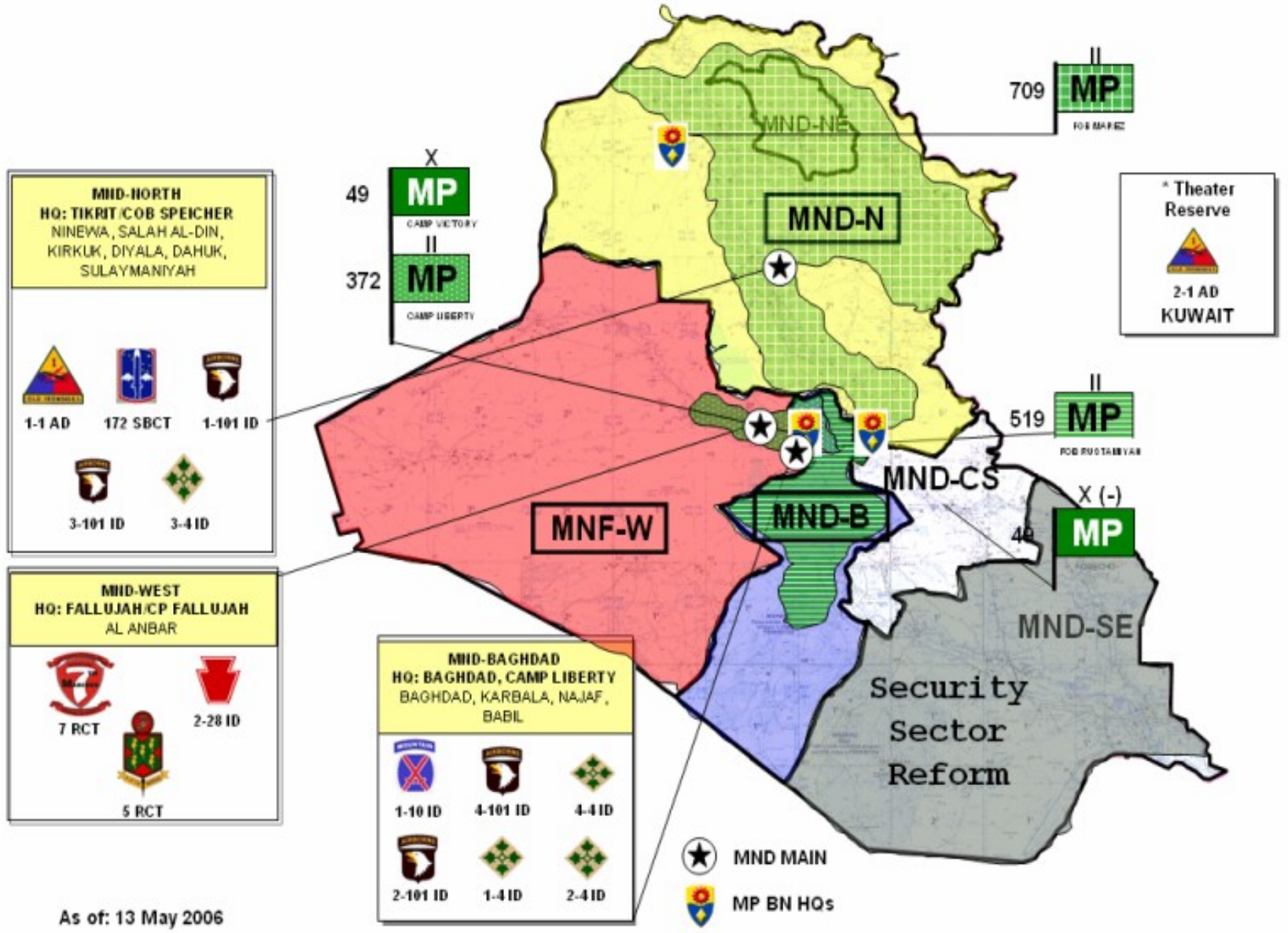
LTC (P) Alex DeVorkin

Command Judge Advocate

49th Military Police Brigade

CAARNG

49TH MP BDE ARRAY OF FORCES



As of: 13 May 2006

Iraqi Police (or “Station Police”)

The Iraqi Police (a,k.a. “Police” or “Station Police”) are largely responsible for receipt of crime reports, dispatch of IP forces, initiation of criminal proceedings and preliminary crime investigation. (Green Stripe on vehicles)

National Police

The Mechanized Police BDE performs counter-insurgency missions up to formation level, utilizing light armor. Also serves as outer cordon security for ERU strikes.

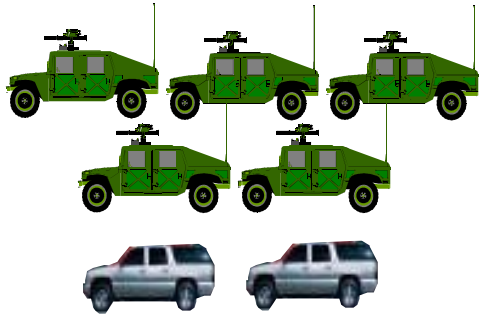
MODEL POLICE TRANSITION TEAM

FOB: **Supported Unit:** **ISF CELL POC:**

MILITARY

Team Chief	
Operations	
Personnel	
Logistics	
IA/SP LNO	
Crim. Intel.	
Comm Spec.	

1 Security Squad (9 Soldiers)



5 X M1114
2 X CIV BLZR
1 X MK-19
2 X M240B
2 X M2
5 X M249
16 X M4/M9
10 X SINCGARS
3 X WARLOCK (R/G)
3 X BFT

CIVILIAN

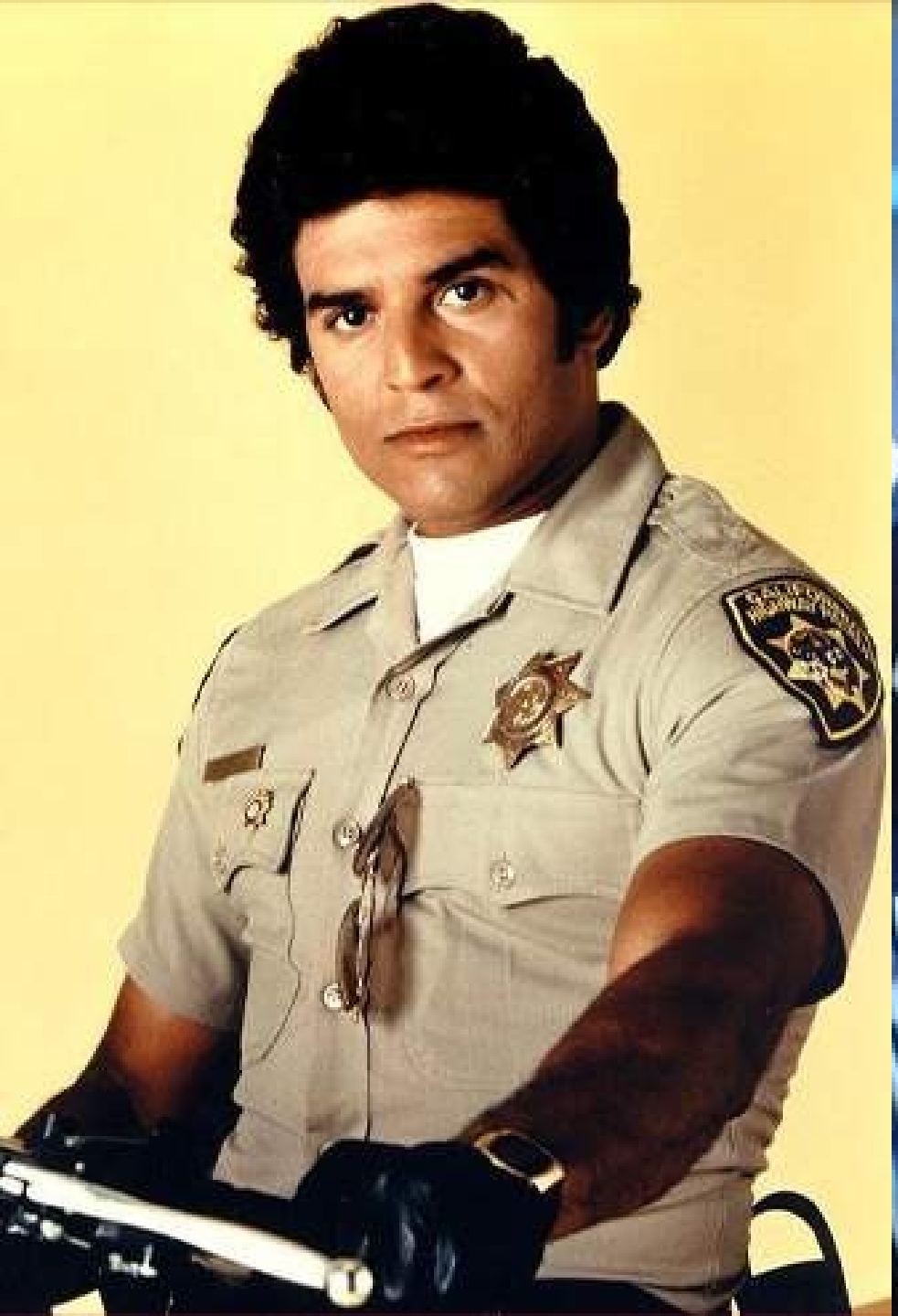
Deputy Chief	
Operations	
Personnel	
Training	
Crim. Intel.	
Linguist	
Linguist	
Linguist	

9 X MILITARY (Security) + **7 X MILITARY SME** + **8 X CIVILIAN** = **24 PAX**

الكاظمية
Kadhamiya
كوت
Kut

U.S. PARATROOPERS

شرطة العراق



Do you like your father?

MUSLIM HANDS
IRAQ APPEAL
2003

TRUE ME

Honesty

Iraqi police have the ability to manage fear and take the just and moral actions necessary to accomplish our goals.

Commitment

To the Iraqi Police, the profession, and to the people served. To pledge with integrity to a course of conduct.

AP
Www.VideosLegais.Com.Br

49th MILITARY POLICE BRIGADE

Command Judge Advocate Section

PRIDE AND POWER

49 MP BDE TEAM
BaghJAG

LTC Alex DeVorkin – Command Judge Advocate

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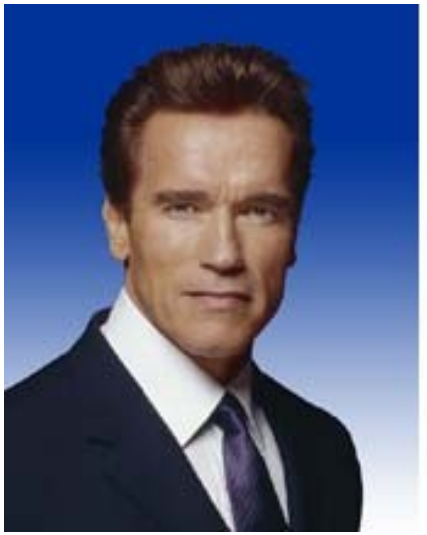
Building 65, Second Floor

NIPR: 822-2750 SIPR: 242-0256

“First to Sue!”

INITIAL CHALLENGE

Switching from a
Title 32 Mind Set……



To a Title 10 Reality.

BRIGADE CJA DUTIES:

- Advise commanders on all matters dealing with military discipline.
- Advise on all matters dealing with administrative law.
- Provide legal briefings to Soldiers on various topics.
- Supervise and coordinate activities of BN paralegals.
- Provide limited legal assistance to Soldiers.

BRIGADE CJA MAY NOT:

- Provide any legal defense advice.
- Provide personal legal advice.
- Establish any attorney-client relationship.
- Review any matter or action for legal sufficiency for which substantive legal advice was given previously to a subordinate commander.

PRIMARY LEGAL TASKS

- Review AR 15-6 Investigations and FLIPLs for Legal Sufficiency.
- Review Escalation of Force (EOF) issues and assist in training.
- Advise Commanders on military disciplinary matters and procedures.
- Provide Legal Support to Subordinate Units and oversight for BN Paralegals.
- Co-ordinate all activities with MNC-I SJA.

Required Reports to MNC-I SJA

WEEKLY

- Administrative Law – Pending AR 15-6 investigations or reported Law of Armed Conflict (LOAC) violations - (Due each Thursday)

MONTHLY

- JAG2 Report – Total Art. 15s Due on the 4th
- Nonjudicial Punishment Due on the 5th
- Pretrial – Pending Courts-martial 1st Tuesday
- JAAR – Claims, Media, LOAC Due on the 27th

Recommended Resources

- Combination Color Printer/Scanner/Copier.
- Thumb drives (2 minimum) with at least 1GB memory capacity.
- Medium Quality Digital Camera with memory card.
- Reliable cellular telephone service (with international calling capability if possible).
- Private and secure work space with an area for confidential communications and locking filing and storage cabinets.

Useful References

- AR 15-6
- AR 25-50
- AR 27-10
- AR 635-200
- AR 735-5
- General Order No. 1A (CENTCOM - DEC 2000)
- General Order No. 1 (MNC-I - 15 OCT 2005)
- MNC-I Policy Letters
- V Corps Commander's Legal Guide (Aug. 05)
- Manual for Courts-Martial (Amended 2005)
- e-J.A.W.S. Resource Digital Library

Incident Description	Steps Once Discovered	Investigation	Appointed By	Remarks
(1) Aircraft Collateral Investigation	a. Report to Chain of CMD b. Investigation required for all Class A, B, and C Aviation accidents. *	15-6	GCMCA must appoint individual/board	Board must be selected from unit other than "mishap unit"
(2) Accidental Death or Serious Injury of Foreign National Civilian Non-combatant (i.e., vehicle accident, stray bullet due to negligent discharge)	a. Report to PMO b. Units JAs ensure IO is appointed within 48 hours. **c. These are not EOFs**	15-6	CDR at any level	Forward final copy of investigation to FCCs for retention in a Potentially Compensable Event (PCE) file. BPT forward upon request.
(3) Combat Operations: Non-Combat Death/Serious Injury	a. An investigation is required if a non-combatant is killed or seriously injured during combat operations. b. Serious Injury is defined in EOF c. Planned operations with documented collateral damage estimated (CDE) approved by the MNC-I Commander are exempt from this requirement, unless the CDE is surpassed	15-6/CDRs Inquiry	CDR at any level	Must be completed within 14 days of incident BDE CDR is the approval authority BPT to forward to higher headquarters when requested
(4) Contractors Firing Weapons (anytime a round is discharged)	a. Contractors are required to report to the ROC (Reconstruction Operations Center) any time they fire a weapon, within 48 hours, and file a comprehensive report within 96 hours b. Units receiving services from contractors are required to conduct a preliminary investigation into all incidents where their contractors fire weapons.	15-6	GCMCA	The 15-6 investigation must be initiated in addition to the contractor's report. BPT forward upon request to MNC-I OSJA

Incident Description	Steps Once Discovered	Investigation	Appointed By	Remarks
(5) Detainee Abuse	a. Reported to chain of CMD to JA b. JA notify MNC-I SJA c. Report to PMO	CID or as determined by higher	TBD	
(6) Detainee Death	a. Notify Medical Examiner b. CMD notify JA c. JA notify MNC-I SJA	CID or as determined by higher	TBD	
(7) Escalation of Force (EOF) (serious injury, death, or damage to LN property over $10,000) **Serious injury** = any event in which a civilian is injured where they require evacuation to, and medical treatment at, a medical treatment facility	a. Report to SIGACT if service member takes direct action when no PID AIF has been established. b. EOF = sequential actions which begin with non-lethal measures graduating to lethal measures **(direct action)** at a person or object in which they consider a risk to themselves or unit; **No direct action = no EOF**	15-6	MSC CDR must determine level of investigation	Forward final investigations through MNC-I AT/FP and MNC-I SJA to Commander, MNC-I.
(8) Escalation of Force (EOF) (no injury, minor injury; or damage to LN property under $10,000)	a. Report as SIGACT if service member takes direct action when no PID AIF has been established. b. EOF = sequential actions which begin with non-lethal measures graduating to lethal measures **(direct action)** at a person or object in which they consider a risk to themselves or unit;	15-6/CDRs Inquiry	CDR at any level may determine appropriate type of investigation, at a minimum a CDR's Inquiry must be conducted.	BPT to forward reports to MNC-I upon request.
(9) Financial Liability for Property Loss (FLIPL)	a. Mandatory for loss, damage, or destruction of government property b. 15-6 is required when loss of a controlled item is discovered lost.	FLIPL Possible 15-6	Appropriate CDR	There are no war time exceptions.

REDEPLOYMENT LEGAL BRIEF

CLIENT SERVICES

OSJA, MNC-I

BRIEFING OVERVIEW

- **Uniformed Services Employment and Reemployment Rights Act**
- **Servicemembers' Civil Relief Act**
- **Uniform Code of Military Justice**
- **Claims**
- **Taxation**
- **Legal Assistance**
- **General Order 1A-No War Trophies**

USERRA

Uniformed Services Employment and Reemployment Rights Act

www.esgr.org

1-800-336-4590

USERRA

- **Provides for the restoration of a soldier's civilian job upon release from active duty (<u>voluntary</u> or <u>involuntary</u>).**

- **Applies to both mobilized Army Reserve and National Guard soldiers.**

USERRA

- **5 Prerequisites (38 USC 4312)**
  1) **Soldier must hold a civilian job.**
  2) **Soldier must give prior notice of military service, where practicable.**
  3) **Period of service may not exceed 5 years.**
  4) **Service must be honorable, or “under honorable conditions”.**
  5) **Soldier must report back to civilian job in a timely manner.**

USERRA

- **7 Basic Entitlements (38 USC 4313-4318)**
  1) **Prompt reinstatement.**
  2) **Keep same status.**
  3) **Keep accrued seniority.**
  4) **Non-seniority benefits.**
  5) **Health insurance is reinstated.**
  6) **Training, retraining, and other accommodations.**
  7) **Discharge, discrimination, and reprisal protection.**

USERRA

- **Enforcement (38 USC 4323)**
  - National Committee for Employer Support of Guard and Reserve (1-800-336-4590) (www.esgr.com)
- The Veterans' Employment and Training Service (VETS) (1-202-693-4701) (www.dol.gov/vets)
- JAG Legal Assistance Office
- Private Right of Action

SERVICEMEMBERS' CIVIL RELIEF ACT

- **The SCRA protects active duty military members and reservists or members of the National Guard called to active duty (starting on the date active duty orders are received) and, in limited situations, dependents of military members (e.g., certain eviction actions).**

SERVICEMEMBERS' CIVIL RELIEF ACT

- **6% Interest rate cap**

- **Request Delay of Court and Administrative Proceedings**
  The request must be in writing and (1) explain why the current military duty materially effects the SM ability to appear, (2) provide a date when the SM can appear, and (3) include a letter from the commander stating that the SM's duties preclude his or her appearance and that he/she is not authorized leave at the time of the hearing.

- **Default Judgment Protection** SM may reopen a default judgment and set it aside. SM must apply to the court for relief within 90 days of the termination or release from military service.

- **Immediate Health Insurance Reinstatement** The SCRA further provides for the reinstatement of any health insurance upon termination or release from service.

UNIFORM CODE OF MILITARY JUSTICE

- **The Uniform Code of Military Justice (UCMJ) is a federal law which is the basis for the Army's system of military justice.**

UNIFORM CODE OF MILITARY JUSTICE

- Once terminated or released from military service, SM is no longer subject to UCMJ.

HOWEVER,

- The UCMJ does have “continuing” jurisdiction.

WHICH MEANS,

- SM is still subject for any offenses committed while on active duty, even if SM has been terminated or released from military service.

- SM can be retained or recalled to active duty status, at any time, to resolve any UCMJ action.

CLAIMS

- **SM may file a claim for Loss of or Damage to Personal Property Incident to Service.**

CLAIMS

- **Need a copy of DD 1842.**
- **Must file within two years of discovery of the loss or damage.**
- **Claims are to be submitted to the servicing Staff Judge Advocate’s Office.**

CLAIMS

- **SM’s are NOT authorized to ship personal belongings at DOD expense.**
- **If SM ships personal items by CONNEX or MILVAN SM’s claim will be BARRED.**
- **SM’s must either carry their personal property with them or mail it back through USPS - BUY THE INSURANCE!**

INCOME TAXES

- **Military pay exclusion– combat zone service**
  - **Enlisted soldiers and warrant officers – all** pay excluded.
  - **Commissioned Officers – T**he maximum monthly dollar amount is derived from the Sergeant Major of the Army's (SMA) basic pay ($6,315.90), plus the HF/IDP amount ($225).
  - These exemptions started the day you arrived in country. These exemptions end when you redeploy. However, the tax exemption remains effective for the entire month, regardless of the number of days you spend in country.

INCOME TAXES

- **Extension of deadlines – combat zone service.**
    - **180 day extension from last day in the CZ.**

- **Applies to both Federal and State taxes.**

- **Write: “COMBAT ZONE-Operation Iraqi Freedom” on the top front of your tax return.**

Legal Assistance

- **Wills**
  - Wills executed prior to deployment are still valid unless revoked.
- **Powers of Attorney (POAs)**
  - POAs executed prior to deployment are still in effect until they expire or are revoked.
- **Other Legal Assistance**
  - For two years after demobilization, demobilized SM’s may receive legal assistance only for issues that arose during period of mobilization.

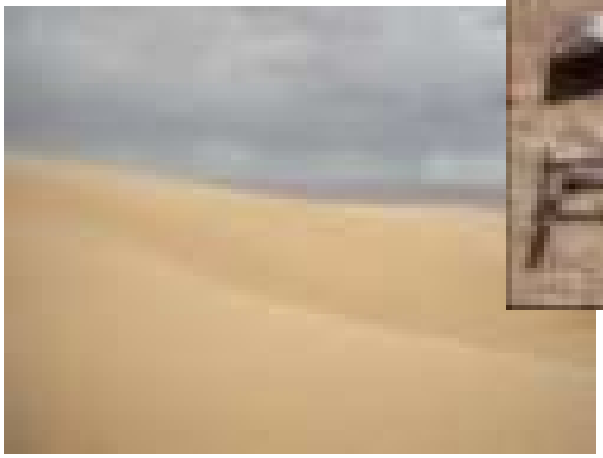
GENERAL ORDER 1A

- **Keeping Prohibited War Souvenirs is a Criminal Offense.**

GENERAL ORDER 1A

THE FOLLOWING ARE PROHIBITED…

Art, Weapons, Personal Items

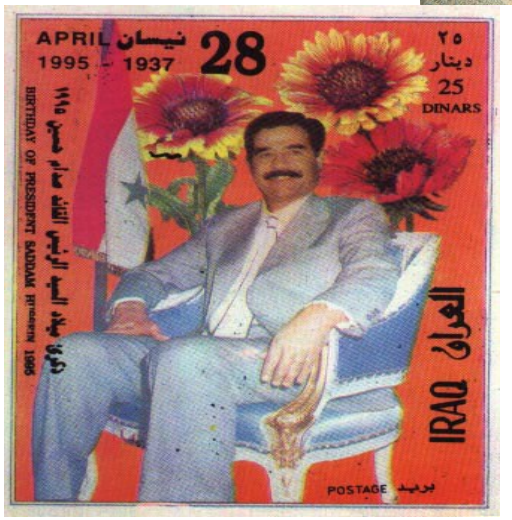


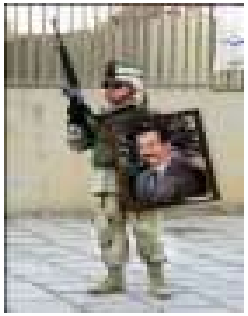
GENERAL ORDER 1A

THE FOLLOWING ARE PERMITTED...

Awards, Patches, Insignias, Uniforms

Flags, Photographs, Posters, Stamps





Detainees

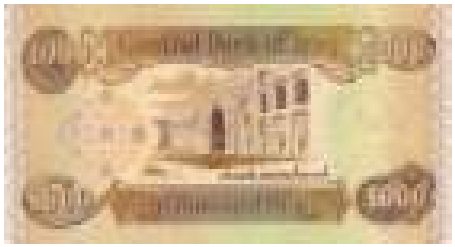
ABSOLUTELY NO PHOTOGRAPHS OF DETAINEES!

Detainees

Dinars

Old Iraqi Dinars - Take as much as you want.

New Iraqi Dinars - Limit of $10,000.



The Iraqi Criminal Justice System

LAST UPDATED 21 JUL 2006

Sources of Law

- Iraqi Penal Code (IPC), third edition, No. 111 (1969).
- Iraq's Law on Criminal Proceedings (LCP) with Amendments, No. 23 (1971).
- Order Safeguarding National Security ("Emergency Law") 2004.
- Transitional Administrative Law (TAL)(8 March 2004).
- CPA Memorandum Number 12 (CPA 12), Administration of Independent Judiciary, May 8, 2004.
- CPA Memo No.3 (CPAM 3) 2004
- CPA Order No. 7 (CPAO 7) 2004
- Iraqi Anti-Terrorism Law No. 13 (ATL) 2005.
- Iraqi Constitution (IC) 2005.

Iraqi Legal System

- Inquisitorial System as opposed to U.S. Adversarial System
- Civil Law System as opposed to U.S. Common Law System
- Based on Egyptian legal system (which is in turn based on the French legal system)
- The Iraqi civil code was authored by an Egyptian scholar in the 1940-1950 time period
- Largely secular legal system which is advanced compared to most Middle Eastern countries

Civil Law

- Roman Law and Napoleonic (French) Code
- Code-driven law with less weight given to legal precedent
- Statutory or Codified law is paramount

Common Law

- English Legal System
- Judge-driven law based on precedents
- Judicial precedents are recorded as “case law”
- “Case law” determines how statutory law is interpreted

Inquisitorial System

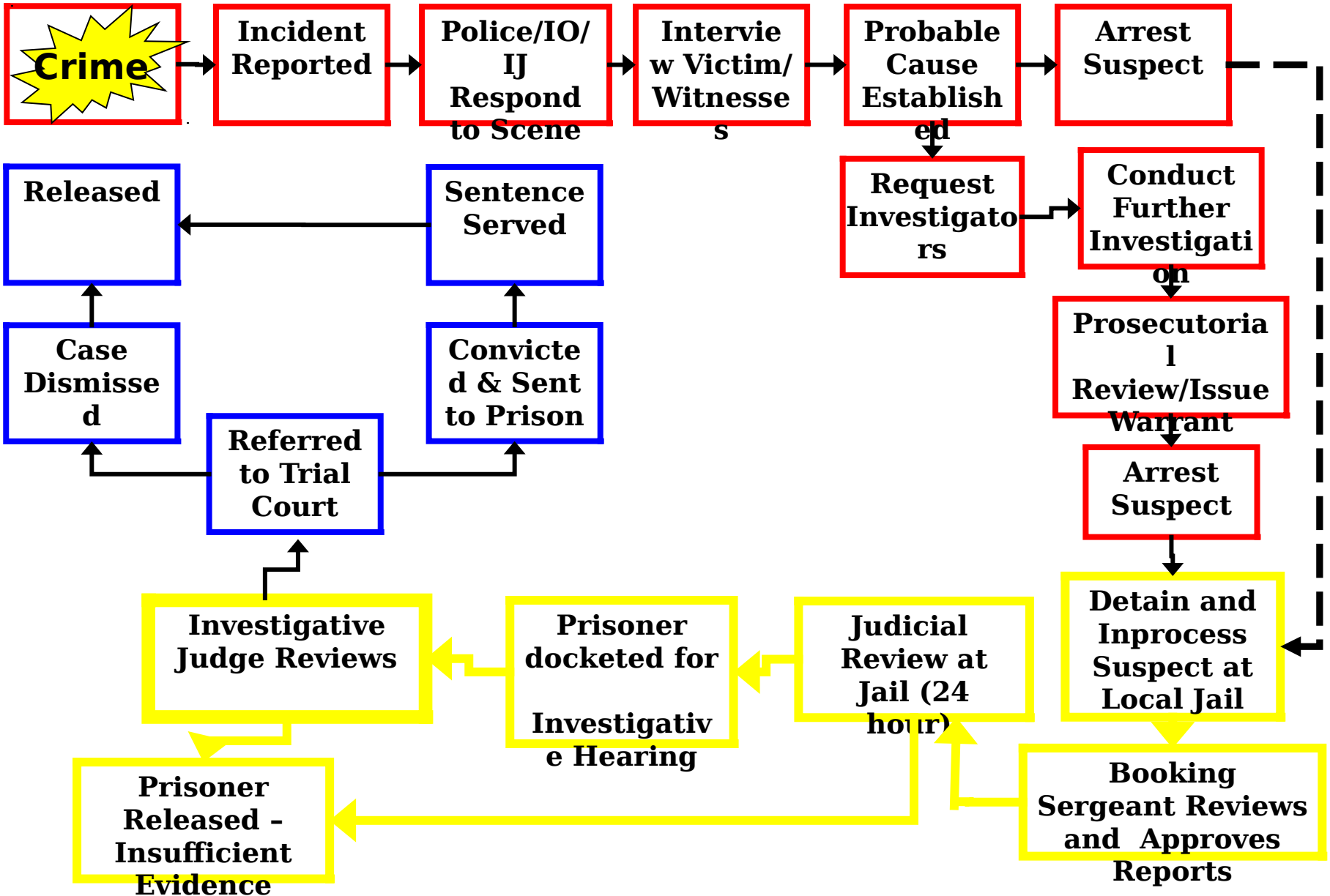
- Judge or judges as investigators of truth
- Judges take active role in investigation and inquiry
- Investigative Judge or Investigatorial Judge

Adversarial System

- Truth found through struggle between two adversaries (attorneys)
- Judges take passive role as referees while attorneys conduct the search for truth

Which one is better?

How a Case Flows Through The System



Key Players in Iraqi Criminal Justice System

Investigative Judges & Trial Judges

Public Prosecuto

Judicial Investigators

Defense Attorne

Police Investigators

Police

PART I

INITIAL INVESTIGATION & ARREST

Iraqi Police

- Do not have as much discretion as U.S. Police Officers
- Operate within traditional Iraqi hierarchical system
- Typically tasked by Police Officers, Judicial Investigators and Investigative Judges
- Should be able to control crime scene and safeguard evidence until investigators arrive.

Police Investigators

- Police Officers
- Respond to crime scene and notify IJ ASAP
- Begin investigation until IJ or JI arrive
- Develop case under guidance of IJ or Judicial Investigator
- Expand Role?

Searches

- Magistrate may ‘ask first’ prior to issuing warrant
- Warrant is required for Home/Business searches
- Search must be undertaken by one of the following (LCP 72(b)):
  - Investigative Judge, Investigating Officer, Member of the police force by order of the Investigative Judge, and, anyone else granted authority by law.
- EXCEPTIONS TO THE WARRANT REQUIREMENT:
  - **LCP 85** – “In urgent cases, he may carry out the search immediately and then inform the local Investigative Judge.”
  - **LCP 73** – “Police may search any location without prior permission in the event of a request for assistance from a person inside the location, or in the case of fire, drowning of other similar case of necessity.”

Search Incident to Arrest

- The investigator or Police may search a suspect incident to arrest (LCP 79). In the event of a misdemeanor or felony that was ***witnessed***, investigator or Police may search the house of the accused, any place where the accused is, or seize persons, papers.

- LCP 107 – Anyone who arrests someone who is in possession of weapons must take those weapons and turn them over immediately to the person issuing the arrest warrant, ***or if there is no warrant, to the nearest police station.***

Arrests

- Any person may arrest any other person accused of a felony or misdemeanor without an order from the authorities concerned in any of the following cases:
  - If the offense was committed in front of the **witness**
  - If the person to be arrested has escaped after legally being arrested
  - If he/she has been sentenced in his absence to a penalty restricting his/her freedom
- All others must have an arrest warrant:

Summons to Witnesses

- Witnesses may be summoned by the magistrate or investigator during the investigation by means of a writ of summons served upon them by one of the following:
  - The police
  - An official of the department issuing the writ
  - Village or district mayor
  - Any other person authorized by law
- If an offense was committed in front of a witness, the witness may be summoned orally
- If a witness fails to appear, an examining magistrate may order the arrest of that witness (order to show cause) (LCP 87-91)

How They Can Arrest
(LCP Section 2)

- You may pursue a person to arrest them (LCP 105):
  - If you can't find them, you may demand that bystanders disclose the accused's whereabouts and/or assist in apprehension
  - You may enter, by force, any place where the accused took refuge

- If there was a warrant for the arrest of a person, the police must then bring the accused before the person who issued the warrant.

- Note: if it is clear that the accused is not guilty of the charge, the police must take steps to release the accused immediately.

Use of Force to Arrest

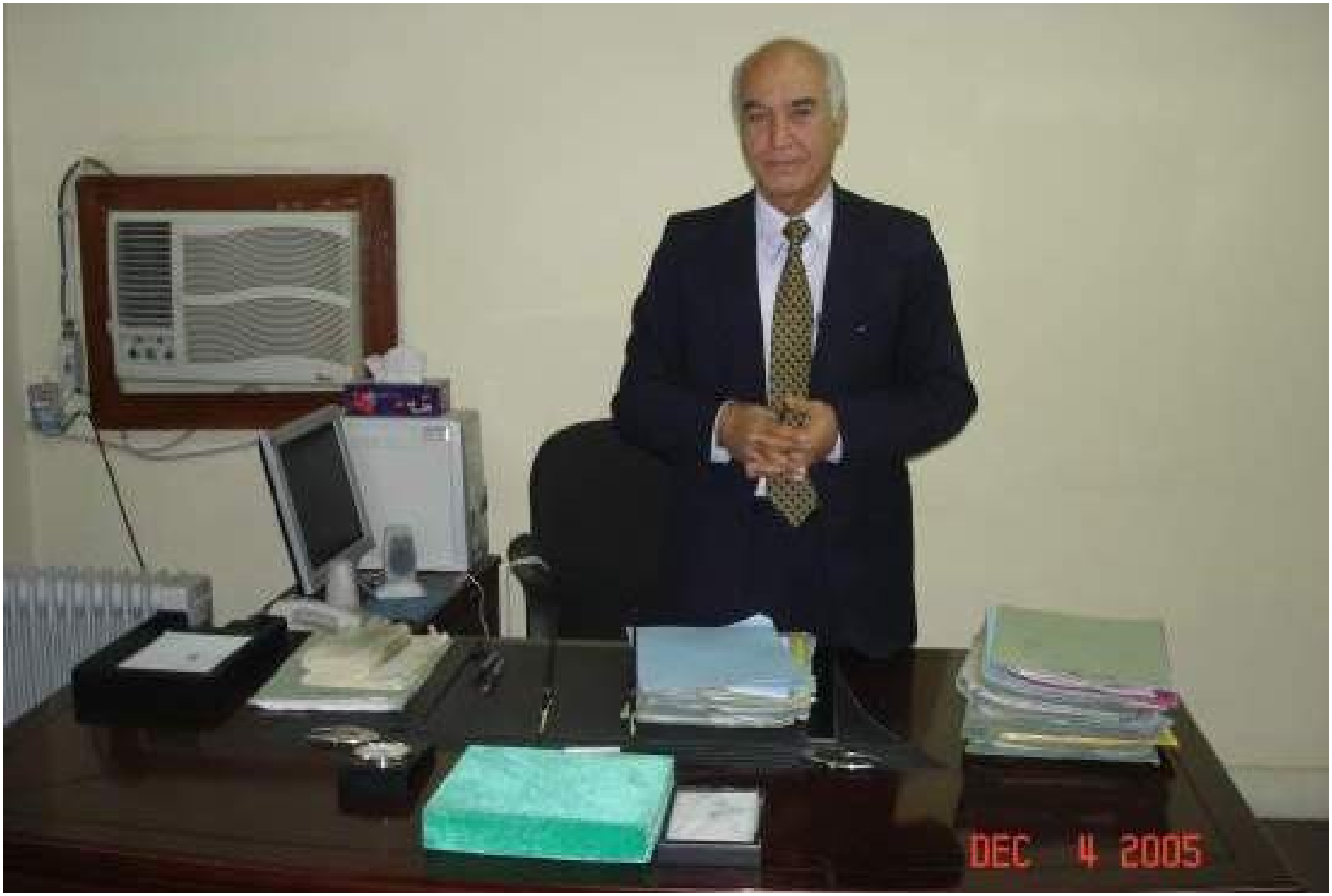
- LCP 108 – If the accused attempts to escape or resists, one may use reasonable force to apprehend him provided that this does not lead to death ***of anyone who has not committed an offense for which the death penalty or life imprisonment is pr***

Judicial Investigators

- Work directly for/with IJ but are paid by MOI.
- Police may act as Judicial Investigators if they attend a 3 month course at the Judicial Training Institute.
- Evidence collected by Judicial Investigators is given more weight than evidence collected by Police Investigators.
- Affidavits/confessions to IPs can be recanted while ones made to Judicial Investigators can not.

PART II

INVESTIGATIVE HEARING



Iraqi Justice Simplified

Arrest

Investigative Hearing

Innocent

Release

Refer to Trial

Innocent

Guilty

Release

Investigative Judges

- No equivalent in U.S. system
- **DA** Functions
  - Determines charges for trial
  - Determines level of trial
  - Guides investigation
  - Questions witnesses
  - Cross-examines defendants
- **Police** (investigative) Functio
  - Investigates crime
  - Collects evidence
  - takes statements
- **Judicial** Functions
  - 24hr Review
  - May adjudge infractions
  - May forward or dismiss charges

The Investigative Hearing

- IJ asks all questions/IJ screens all evidence/DC & Prosecutor present
- IJ creates a body of evidence for the Trial Court
- Accused may make “observations” about evidence – no cross-examination
- Silence may be inferred as guilt
- Dismisses case or refers to proper level of Trial Court
- Rules finally on infractions

The Decision of the Investigative Judge

- **Refer case to appropriate level of trial** (felony, misdemeanor, juvenile) if:
  - Act committed is punishable by law
  - Sufficient evidence (51% - probable cause) exists to forward to trial
- **Temporarily close case if:**
  - There is insufficient evidence to determine guilt or innocence
  - IJ will document why case was closed and then order release of suspect
- **Reject case / close case file:**
  - Sufficient evidence exists to show that the the accused is not guilty
  - The Judge cannot exercise authority over this type of case (subject matter jurisdiction);
  - The accused is a minor (personal jurisdiction)
- **Rule finally on case** – if IJ determines that case is appropriately disposed of as an **infraction** (offense punishable by less than three months confinement) and rule finally on it

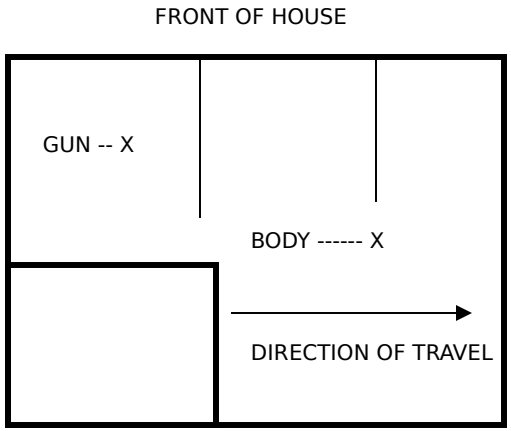
What Evidence do Iraqi Courts Require?

PICTURES

- **Crime scene**
- **Suspects with illegal items**
- **Video tape**

DIAGRAMS

- **Crime scene layouts**
- **Show distances**
- **Compare pictures with diagrams**



SWORN STATEMENTS

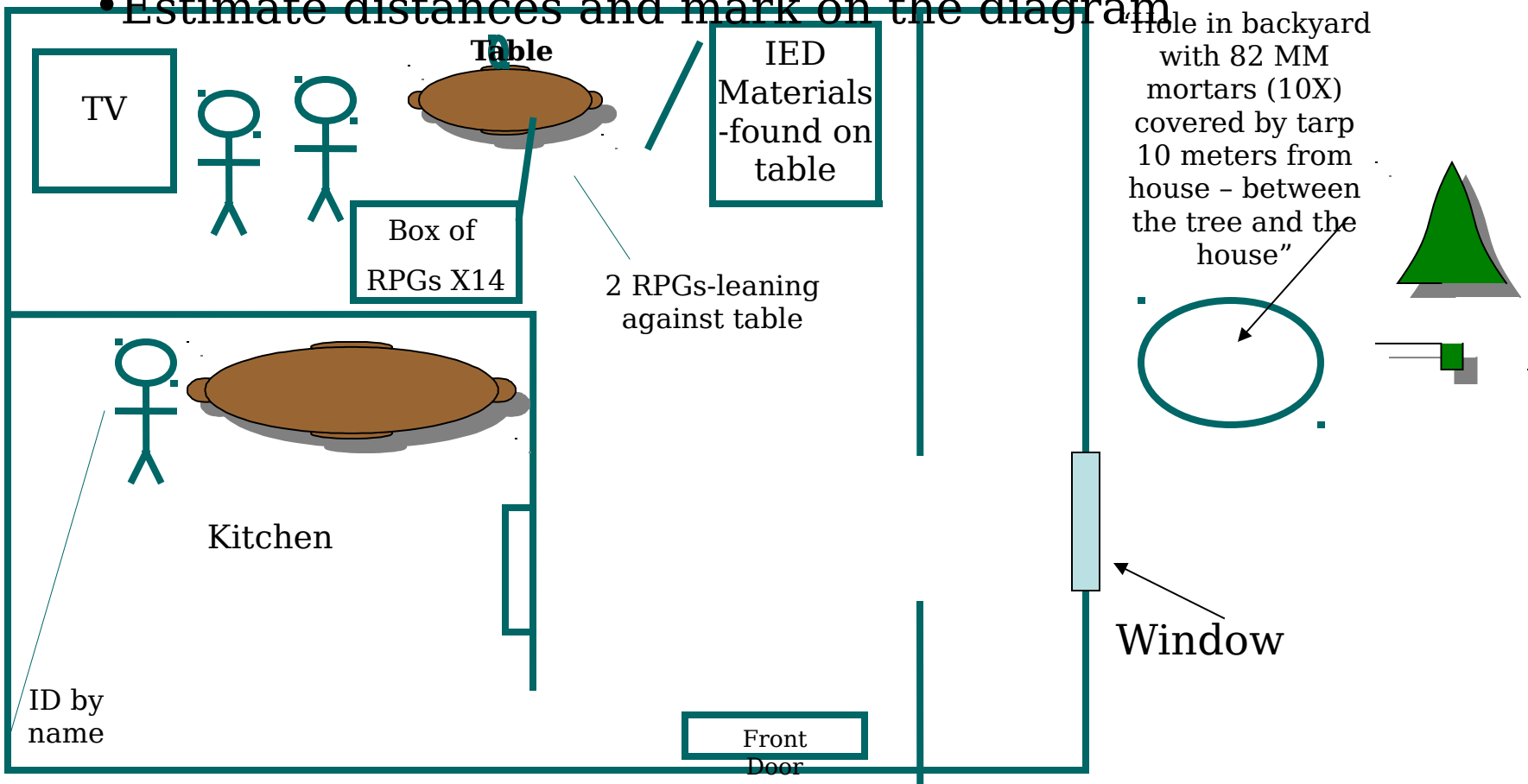
- **Confessions**
- **Eyewitness testimony**
- **Must have two (2)**

Pictures

- Take multiple pictures of the crime scene.
- Digital is better but color film will work.
- Take pictures of the detainee with the evidence of the crime (weapons, contraband) at the crime scene (where the evidence was found)
- When in doubt – photograph it
- Use video function on still camera to capture

Diagrams

- Diagrams were used before the use of photographs was prevalent, judges are familiar with them, and expect to see them, even where photos are available.
- Draw a diagram of the scene of the crime, include positions of buildings, people, contraband, terrain features, and key roads.
- Estimate distances and mark on the diagram.


TV
Table
IED Materials -found on table
Box of RPGs X14
2 RPGs-leaning against table
Hole in backyard with 82 MM mortars (10X) covered by tarp 10 meters from house – between the tree and the house”
Kitchen
Window
ID by name
Front Door

PART III

TRIAL PHASE

Different Levels of Criminal Courts

- Misdemeanor Courts
  - Presided over by single District-level Judge
  - Offenses punishable by 3 Months to 5 Years
  - Offenses punishable by less than 3 Months are “infractions” and are decided finally by the Investigative Judge at the Investigative Hearing
- Felony Courts
  - Presided over by panel of three District-Level Judges:
  - Offenses punishable by > 5 Years
  - Serve as appellate court for infraction cases and misdemeanor court appeals.
- Juvenile Court – 18 and younger
  - Presided over by Three Person Panel (Judge/Atty/Social Wkr)
- Court of Cassation – Appellate Court

Trial Judges

- Independent Judiciary (High Juridical Council)
- Investigative Judges refer cases to trial where the Trial Judges determine guilt/innocence
- Trial Judges apply law to the facts as presented by the Investigative Court

Defendant's Appearance – Trial Phase

- When the trial court receives the case file from the Investigating Judge:
  - The Trial Court sets a trial date
  - A summons is issued (LCP 143) to the participants: Public Prosecutor, Defendant (not his or her attorney), testifying witnesses, & others.
  - Notice Requirements: Infraction – 1 day notice; Misdemeanor – 3 days notice; Felony – 8 days notice
- The defendant must appear in person; he/she cannot send a representative
  - The defendant can present a written excuse to not attend, and if accepted, the trial is delayed

Public Prosecutors

- Very different from prosecutor in U.S. common-law/adversarial system
- Advise and assist judiciary and police during investigation
- Administer and present case to court with recommendations
- Have investigatory role, subservient to Investigative Judge
- Have been marginalized due to current security situation

Defense Attorneys

- Advise client on criminal justice issues and case rights (appeal and civil)
- Argue client's position before Investigative Judge and Trial panel; does not conduct cross examination of witnesses
- Ensure exculpatory evidence is presented before the court
- Ensure court, prosecutor and police operate within the criminal procedure code and Constitution

Right to Counsel

	FELONY ***(5 years or more maximum sentence)***	***MISDEMEANOR*** ***(5 years or less maximum sentence)***
HIRED COUNSEL	May appear on behalf of defendant at any stage of case (from investigations to trial)	May appear on behalf of defendant at any stage of case (from investigations to trial)
PUBLIC DEFENDER	Appointed only at trial stage. No right to counsel during investigation. Receives low fixed legal fee	Not entitled to attorney at any stage of judicial proceeding

$ Conciliation $

- Payment to crime victims in lieu of prosecution
- Acceptable both legally and culturally
- Where the maximum sentence does not exceed one year, conciliation can take place without approval of a judge
- If maximum sentence more than one year, a judge must approve conciliation agreement.
- Conciliation may take place at any stage up to the verd

Confessions

- A defendant does not have to answer the questions of an examining magistrate or investigator at the outset of the investigation
- A defendant may not remain silent before an Investigative Judge (*e.g.,* felony trial); Refusal to answer will be considered as evidence against the defendant
- Confessions:
  - Prohibition on the use of “illegal methods” to extract confession (threats; injury; mistreatment; use of drugs; “promises”)
  - If coercive methods used had no causal link to the confession, then court may admit
  - Even if there is a causal link, court will allow confession if other corroborative evidence exists

Police Response to Reported Crime

CRIME IS REPORTED TO POLICE

Police immediately notify local Investigative Judge and Public Prosecutor's Office of offense

Crime Witnessed

INVESTIGATE CRIME Immediately take control of scene and collect evidence – notify Judge ASAP

Submit evidence and report findings to Investigative Judge – await further guidance

Crime Not Witnessed

Will evidence be lost if the investigation is delayed? (exigent circumstances?)

YES

NO

Police must wait for guidance from Investigative Judge before investigating

Police Officers as Investigators

- Station Police Officer actions upon being notified of an offense:
  - Notify the local Investigative Judge (IJ) and the Public Prosecutor's Office of the occurrence of the offense
  - Go immediately to the place where the offense occurred; note that the investigating officer may:
    - Forbid those present to leave until an official record has been made
    - Summon any person who may be able to supply information about the offense to the scene
    - Request the assistance from other ISF if necessary
  - Record a statement of the victim
  - Question the accused / Question relevant witnesses (remember rule on binding and non-binding statements) Request IJ or JI
  - Impound any weapons and items that may have been used during the commission of the offense
  - Examine and preserve any material traces of the offense
  - Ensure that photographs are taken and diagrams are drawn as accurately as possible (LCP 40-41):

Questioning of the Accused

- LCP 123 - The examining magistrate or investigator must question the accused within **24 hours** of his attendance, after
  - Proving his/her identity
  - Informing him/her of the offense of which he/she is accused
- QUESTIONING BY THE JUDGE or POLICE
  - Right to remain silent
  - Right to an attorney
- DNA to CF with Security Detainees
- No Exclusionary Rule
- The use of any “illegal method” to influence the accused and extract a confession is not permitted
  - Illegal methods: mistreatment, threats, injury, enticement, promises, psychological influence, or use of drugs / intoxicants (LCP 127)

Detention Overview

The Basics

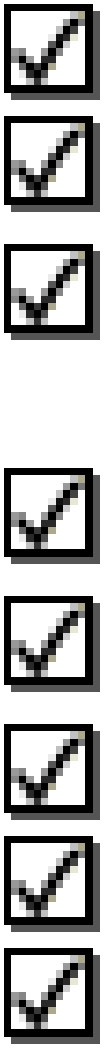
D-Cell Logbook

THE POLICE LOG - LCP 113 – In order to hold a person, you must log (including Police Station detention cells):

1. FULL NAME
2. PARAGRAPH OF LAW (IPC) CHARGED
3. DATE OF DETENTION
4. DATE OF EXPIRATION OF DETENTION

Detention Checklist

- Evidence Safeguarded
- 24 hr Review
- Separate by gender, age
- Two sworn statements, diagram, photos
- Adequate food, water, shelter
- Medical issues
- Security
- Logbook – name, date of arrest, charge, date of 24 hour review

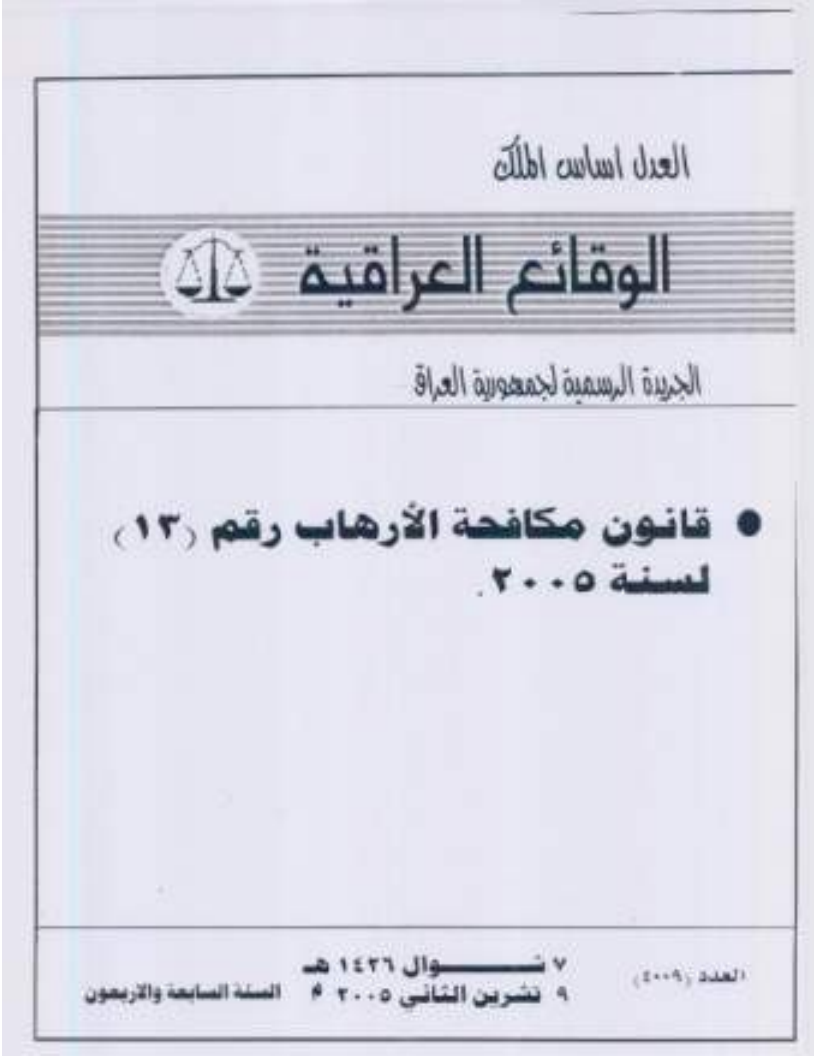


IP Detention Overview

- Where defendant is held in pretrial confinement, judicial review must take place every **15 days** regarding the detention
- Total period of detention must not exceed one quarter of the maximum sentence or 6 months, whichever is shorter
- For offenses punishable by death, defendant can be detained for as long as necessary to complete the judicial process

Anti-Terrorism Law of 2005

- Five Articles – Enacted in November 2005 by the Transitional Government – published in the Iraqi Gazette.
- Article 1 – Defines Terrorism as “Any criminal activity done by an individual or a group against an individual, a group or an organization or causing a harm to national or private properties aiming to disturb the national security and to society and cause riot and disturbance among people”


العدل اساس الملك

الوقائع العراقية

الجريدة الرسمية لجمهورية العراق

● قانون مكافحة الأرهاب رقم (١٣) لسنة ٢٠٠٥.

العدد (٤٠٠٩) ٧ شوال ١٤٢٦ هـ
٩ تشرين الثاني ٢٠٠٥ م السنة السابعة والاربعون

Anti-Terrorism Law of 2005

- **Article 2** – Identifies Specific Terrorist Activities:
  - Violent, threats, any activity aim to put the life of an individual or group in danger, regardless of the reasoning behind the activity
  - Damaging on purpose private or public properties
  - Anyone who leads an arm group of people and plan for causing riot and disturbance in the society
  - Causing seditions among citizen and different religious groups
  - Attack on police and the army or government officials
  - Attacks of embassies and consults
  - The use of explosive devices to harm and kill people or the use of chemicals weapon.
  - Kidnapping people to get ransoms or to kill them
- **Article 3** – Identifies Terrorist Threats Against Society
  - Any activities aim or lead to disturbance in the society or mess with the security forces.
  - Anyone who takeover a group of police or army without an official order
  - Any violent activity to take over the government
  - Any arm attack or plans against the constitutions authority
  - Anyone delay on purpose official order

Anti-Terrorism Law of 2005

- Article 4 – Penalties
  - The death penalty to anyone gets convicted in any terror activity based on the first and second article of this law.
  - Life imprisonment to anyone hides information about a terror activity or could lead to the arrest terrorists.
- Article 5 – Mitigation
  - Any individual inform the authorities before a terror event or action and lead to the arrest of the terror group
  - Mitigate punishment to any individual cooperate with authorities to arrest the rest of the rest of the terror network.
- Article 6 – Final Judgments
  - The crimes mentioned in this law are immoral and dishonorable.
  - Any money or items found shall be confiscated.
  - Apply all Penalties base on the articles of this law.
  - The law shall be is in effect from the day it’s published.

PRESENTING FOR YOUR CONSIDERATION…

- THE FEW…
- THE PROUD…
- FULLY-ARMED AND READY FOR BATTLE…
- COMBAT JAG!